



March 23, 2026

Hawai'i State Senate
Committee on Labor and Technology
415 S. Beretania Street
Honolulu, HI 96813

Re: House Bill 2458: Support

Dear Honorable Senators of the Committee on Labor and Technology,

Consumer Reports¹ HB 2458 addresses an everyday affordability problem for consumers: surveillance pricing. Surveillance pricing, also sometimes referred to as “personalized” pricing, is when a company uses personal data that they’ve gathered about a consumer—like data about their online search history, their location, or inferences about family structure, health conditions, or income—to set the price of a product or determine the discount offered to a consumer. Consumer Reports² has heard from our members, more than 5,000 of whom live in Hawai’i, about their frustrations with opaque pricing tactics.

We applaud Rep. Grandinetti and the seventeen other legislative co-sponsors for tackling this critical issue at a time when affordability is front of mind for Hawai’i residents. If enacted, this bill would make Hawai’i a leader on affordability. It prohibits surveillance pricing, while protecting transparent, non-discriminatory discounts. It would also be an important starting point for prohibiting surveillance pricing in other sectors, including online retail more broadly. CR has one suggested change that we believe would make the bill more workable for both consumers and retailers, and look forward to working with the legislature.

¹ Founded in 1936, Consumer Reports (CR) is an independent, nonprofit and nonpartisan organization that works with consumers to create a fair and just marketplace. Known for its rigorous testing and ratings of products, CR advocates for laws and company practices that put consumers first. CR is dedicated to amplifying the voices of consumers to promote safety, digital rights, financial fairness, and sustainability. The organization surveys millions of Americans every year, reports extensively on the challenges and opportunities for today's consumers, and provides ad-free content and tools to 6 million members across the U.S.

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What is surveillance pricing?

Not long ago, before the rise of online shopping and mass data collection, consumers could shop anonymously, confident that the price tag they saw on the shelf wasn't influenced by the store's knowledge of their family, shopping habits, online browsing, ability to pay, or any particular situation that could increase their urgency to purchase. That is no longer the case.

Companies can gather data on consumers' purchase histories, speed of click through, history of clicks, search history, 'likes' on social media, geolocation, IP address, device type, and more, to create a detailed portrait of a consumer. They can use artificial intelligence to make detailed inferences about consumers based on this data. These profiles, combined with technology that enables companies to display different prices to different consumers online—or send discounts on an individualized basis—means that companies have all the tools they need to implement surveillance pricing. Companies can understand when a consumer might be desperate enough to tolerate a higher price or when a loyal customer will keep coming back even in the absence of discounts.

A recent investigation from Consumer Reports, More Perfect Union and Groundwork Collaborative, revealed that Instacart, enabled by the artificial intelligence pricing software Eversight, was running large-scale, hidden price experiments on unsuspecting customers.³ The team of journalists and researchers analyzed live shopping data from more than 400 Instacart shoppers across four U.S. cities. The findings show many U.S. shoppers who order grocery pickup and delivery through Instacart were unknowingly enrolled in AI-enabled experiments that can charge up to 23% more for the same item ordered from the same store at the same time.

Nearly three-quarters of grocery items tested on Instacart showed different prices to different shoppers. Some items carried up to five different price points simultaneously. For example, people shopping at a Safeway in Washington, D.C., saw a dozen Lucerne eggs listed at five different prices — \$3.99, \$4.28, \$4.59, \$4.69, and \$4.79. The average price variations observed in the study could cost a household of four about \$1,200 per year. Instacart's algorithmic pricing experiments were found to be occurring through the platform at several of the nation's biggest grocery retailers, including Albertsons, Costco, Kroger, Safeway, Sprouts Farmers Market, and Target.

In the wake of the investigation, U.S. Senator Ruben Gallego introduced a bill to prohibit surveillance pricing citing the investigation, at least 12 other members of Congress sent letters to

³ Derek Kravitz, "Instacart's AI-Enabled Pricing Experiments May Be Inflating Your Grocery Bill, CR and Groundwork Collaborative Investigation Finds" *Consumer Reports*, Dec. 9, 2025, <https://www.consumerreports.org/money/questionable-business-practices/instacart-ai-pricing-experiment-inflating-grocery-bills-a1142182490/>

the FTC and to Instacart, the FTC reportedly opened an investigation into Instacart, and Instacart announced it was ending the practice.⁴

Other enterprising journalists have conducted investigations and discovered examples of apparent surveillance pricing:

- An investigative journalist writing for SFGate looked at the prices offered for a hotel room in Manhattan for a specific date, and varied his operating system, browser, cookies, and location (his computer's IP address).⁵ He found that when he changed his IP address from a Bay Area location to locations in Phoenix and Kansas City, the prices dropped by more than \$200 per night in one instance, and more than \$511 in another instance.
- ProPublica found that test-prep company Princeton Review was offering different prices for its tutoring services depending on a customer's zipcode.⁶ The result, they found, was that Asian customers were nearly twice as likely to receive a higher price.
- The Wall Street Journal reported that Orbitz, the travel aggregation company, determined that Mac users spent more per night on hotels than Windows users, and began steering Mac users towards pricier hotels.⁷
- A Minnesota local news site discovered that Target changed the prices displayed on its app for certain products based on whether the customer—and their device—was physically inside a Target store. When the reporters looked at the Target app while inside a store, they found that a Graco car seat was \$72 more expensive than when they had been sitting on the far side of the Target parking lot, and a Dyson vacuum was \$148 more expensive.⁸

Research from the FTC indicates how widespread the practice of surveillance pricing may be. In July of 2024, the FTC issued orders to eight companies, including Mastercard, Accenture, McKinsey, and JP Morgan Chase, identified as middlemen that offer “surveillance pricing products and services that incorporate data about consumers’ characteristics and behavior.”⁹ The

⁴ Derek Kravitz, “Instacart Stops Pricing Tests on It’s Platform Amid Outrage from Customers”, Consumer Reports, Dec. 22, 2025,

<https://www.consumerreports.org/money/questionable-business-practices/instacart-stops-ai-pricing-experiments-a1176475852/>

⁵ Keith A. Spencer, “Hotel booking sites show higher prices to travelers from Bay Area,” *SFGate*, Feb. 3, 2025. <https://www.sfgate.com/travel/article/hotel-booking-sites-overcharge-bay-area-travelers-20025145.php>

⁶ Julia Angwin, Surya Mattu and Jeff Larson, “The Tiger Mom Tax: Asians Are Nearly Twice as Likely to Get a Higher Price from Princeton Review,” *ProPublica*, Sept. 1, 2015

<https://www.propublica.org/article/asians-nearly-twice-as-likely-to-get-higher-price-from-princeton-review>

⁷ Dana Mattioli, “On Orbitz, Mac Users Steered to Pricier Hotels,” *Wall Street Journal*, Aug. 23, 2012

<https://www.wsj.com/articles/SB10001424052702304458604577488822667325882>

⁸ Chris Hrapsky, “The Target app price switch: What you need to know” *Kare 11*, Jan. 27, 2019

<https://www.kare11.com/article/money/consumer/the-target-app-price-switch-what-you-need-to-know/89-9ef4106a-895d-4522-8a00-c15cff0a0514>

⁹ “FTC Issues Orders to Eight Companies Seeking Information on Surveillance Pricing”, Federal Trade Commission, July 23, 2024,

<https://www.ftc.gov/news-events/news/press-releases/2024/07/ftc-issues-orders-eight-companies-seeking-information-surveillance-pricing>

orders contained a detailed list of questions about how the companies segmented consumers and targeted prices. In January of 2025, staff released an interim research summary which indicates breadth of the issue; clients of surveillance pricing or consumer segmentation products included grocery stores, apparel retailers, health and beauty retailers, home goods and furnishing stores, convenience stores, building and hardware stores, and general merchandise retailers such as department or discount stores.¹⁰ Some of the data categories that intermediary firms or their clients collected to facilitate pricing or segmentation include web-pixels, which can collect information like a consumer's IP address (which can approximate their location), the browser they use, the language settings they select, whether they've used their mouse to highlight the name of a particular product, how far down a page they scroll while shopping, and more.¹¹ Several companies, in response to FTC questions, claimed that these tools can increase margins by 1-4%.¹²

Surveillance pricing can hurt consumers by offering different prices based on a protected status, such as race or gender. It can also hurt consumers by pushing them to pay the most they are individually willing to pay, or by taking advantage of them in moments of desperation, when their willingness to pay increases. One hypothetical example offered by former chair of the Federal Trade Commission, Lina Kahn, is airlines charging an individual more for a plane ticket if the airline infers there was a death in the family and the consumer needs to attend a funeral.¹³

There's another downside for consumers beyond potentially paying higher prices. Personalized pricing—especially personalized discounts that are offered through membership programs or are contingent on the use of certain mobile apps—can make the experience of trying to discover a product's price and compare across vendors much more time intensive and frustrating. This difficulty will have broader effects in the market, since comparison shopping is an engine of market competition. Retailers only feel the need to compete to offer the best price if consumers can comparison shop with ease, identify the best price, and make a decision based on that knowledge. As comparison shopping becomes more cumbersome for consumers, the competitive pressure decreases.

What HB 2458 does: Prohibiting surveillance pricing in food sales and protecting transparent discounts

¹⁰ "FTC Surveillance Pricing 6(b) Study: Research Summaries A Staff Perspective", January 2025, https://www.ftc.gov/system/files/ftc_gov/pdf/p246202_surveillancepricing6bstudy_researchsummaries_redacted.pdf

¹¹ *ibid*

¹² *ibid*

¹³ Jaures Yip, "FTC chair Lina Khan warns that airlines might one day use AI to find out you're attending a funeral and charge more," *Business Insider*, September 23, 2024

<https://www.businessinsider.com/ftc-chair-lina-khan-warns-ai-pricing-discrimination-risks-2024-9>

HB 2458 prohibits the use of a consumer’s personal data, to set a customized price for food. HB 2458 also prohibits the secret and automated use of personal data to target niche groups of individuals with prices. This is important because the fine-grained data that companies possess about consumers enables them to place individuals into highly specific groups, such as “mothers of toddlers without higher education earning less than \$75k” or “diabetic male over 35 earning more than \$150k.”

For example, in a Consumer Reports investigation of Kroger’s loyalty program data practices, consumers requested the data the grocer had collected about them.¹⁴ One consumer received a 62-page long profile, which included inferences about the size of his family, his education level, an estimate of his income, and other disparate information other companies might use to segment their shoppers for price targeting, including how likely he is to go on a cruise, have a pet, or travel internationally.¹⁵ An investigation by the Wall Street Journal found that Staples varied the prices consumers saw for specific items based on their estimated location, seemingly offering a discount if a consumer is physically near competitor stores OfficeMax or Office Depot.¹⁶ The result was that consumers in higher average income areas tended to get more discounts than consumers in lower average income areas.

How HB 2458 protects transparent discounts

Straightforward discounts and sales that everyone is eligible for and that do not rely on personal data are not impacted by this bill. The bill also protects transparently offered, non-discriminatory discounts—a crucial provision as discounting practices become more opaque and less trustworthy. Specifically, the bill makes clear that following categories of discounts are not surveillance prices and are protected by this bill:

- Discounts that any consumer could potentially receive, so long as it is posted publicly on the company's website or mobile application. This is a broad category that includes many common kinds of discounts, such as BOGO, discounts for signing up for a mailing list, discounts for related products (eg. 20% off of meals after you buy theme park tickets), discounts a consumer could receive through a loyalty program, so long as anyone could sign up for the loyalty program—just about any kind of discount that is based on the consumer taking an action or making a purchase.
- Discounts that are offered to members of a broadly defined group, such as teachers, students, veterans, and seniors, so long as the terms and criteria are posted publicly, and any consumer who can demonstrate they are part of the group can receive the discount.

¹⁴Derek Kravitz, “Inside Kroger's Secret Shopper Profiles: Why You May Be Paying More Than Your Neighbors”, Consumer Reports, May 21, 2025

¹⁵ *ibid*

¹⁶ Jennifer Valentino-DeVries, Jeremy Singer-Vine and Ashkan Soltani, ‘Websites Vary Prices, Deals Based on Users' Information’, *Wall Street Journal*, Dec. 24, 2012

This protects commonly understood group discounts, but does not permit profiling that is invasive and causes unfairness. For example, discounts that microtarget seniors but specifically exclude certain seniors based on inferences about their health conditions or wealth would not be permitted.

Why require some transparency around discounts? Discounts are increasingly complex and opaque. Retailers can end-run around a ban on personalized pricing by increasing list prices and then offering “personalized discounts” based on individual’s personal data and inferences about their willingness to pay. In the Staples example mentioned above, the office supplier seemingly inferred that consumers with easier access to competitor stores would have a lower willingness to pay. Consumers are also invasively profiled in the name of “personalized discounts.” In another example, pricing analysts at Target created an algorithm to predict the likelihood that a specific consumer is pregnant—based on their shopping habits—and then allocate discounts on the basis of that prediction.¹⁷ In yet another example, an online casino was penalized by a UK regulator for advertising free spins and bonuses to someone who searched online “How to unsubscribe from all gambling,” a query that indicates a possible gambling addiction.¹⁸

Suggested changes

While CR strongly supports a policy of prohibiting surveillance pricing, there are some tweaks we suggest in order to ensure workability, while providing core consumer protections.

Use consensus definition of ‘personal data’ for ‘personally identifiable information’

At least 20 states have enacted consumer data privacy laws,¹⁹ and most of these laws have converged on a definition of personal data that is adapted to how companies collect and store consumer data in the 21st century. For example, companies may collect hundreds of data points about a consumer, but not associate that information with their name or email address, and instead associate it with a unique identifier such as a cookie, device identifier, or IP address. The bill’s current definition, on the other hand, appears to be derived from data breach notification laws that cover only a narrow range of personal data, and has many gaps that would not cover common, invasive profiling techniques that companies employ in 2026.

We strongly recommend substituting in a definition of personally identifiable information that is similar to consumer data privacy laws across the country; this definition has also been road tested, and companies have built compliance practices around it:

¹⁷ Charles Duhigg, “How companies learn your secrets,” *The New York Times Magazine*, Feb. 16, 2012

¹⁸ Rob Davies, “Online casino advert banned for targeting problem gamblers” *The Guardian*, Oct. 9, 2019, <https://www.theguardian.com/society/2019/oct/09/casumo-ad-banned-for-targeting-people-trying-to-stop-gambling>

¹⁹ “Which States Have Consumer Data Privacy Laws?” *Bloomberg Law*, April 7, 2025, <https://pro.bloomberglaw.com/insights/privacy/state-privacy-legislation-tracker/#map-of-state-privacy-laws>

“Personal data” means any information, including unique identifiers, that is linked or reasonably linkable, alone or in combination with other information, to an identified or identifiable individual or a device that identifies or is linked or reasonably linkable to an individual. “Personal data” does not include de-identified data or publicly available information.²⁰

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Often, our members can't know for sure if they are experiencing surveillance pricing, or dynamic pricing—where the price for everyone changes quickly—or other pricing tactics. What they do know is that it is increasingly difficult to try to find the best price for a product. HB 2458 would help address this frustration. It also provides Hawai'i a way of tackling affordability when constituents are feeling the pinch. We respectfully encourage an 'aye' vote.

Sincerely,

Grace Gedye
Senior Policy Analyst
Consumer Reports

²⁰ Consumer Reports, Electronic Privacy Information Center, “Consumer Reports and the Electronic Privacy Information Center unveil new model legislation to protect the privacy of American consumers” Sept. 24, 2024, https://advocacy.consumerreports.org/press_release/consumer-reports-and-the-electronic-privacy-information-center-unveil-new-model-legislation-to-protect-the-privacy-of-american-consumers/